

Letter in the New Law Journal

Bad law

Hard cases make bad law. This was proved yet again by the Appellate Committee's majority decision in *Manned Investment Co Lid v Eagle Star Life Assurance Co Ltd* (1997) *The Times*, May 26. A

lease contained a break clause of transparent clarity: "The tenant may by serving not less than six months' notice to expire on the third anniversary of the term commencement date determine this lease ...". The term commencement date was January 13, 1992. To comply with the break clause the notice therefore had to expire on January 13, 1995.

In fact the tenant served not : less than six months' notice stated to expire on January 12, 1995. Was this effective to break the lease? Clearly not, says the literal meaning. Clearly not, said the three judges of the Court of Appeal, and the Lords Goff and Jauncey.

However, the Lords Steyn, Hoffmann and Clyde ruled that the tenant, the *Eagle Star Assurance Co Ltd*, should be allowed a little leeway. Lord Steyn said "a court might nowadays ignore immaterial errors which would not have misled a reasonable recipient".

But the error was immaterial only if the law would so hold, as hitherto it had not. (On this point Lord Goff cited *Phipps & Co (Northampton and Towcester Breweries Ltd) v Rogers* [1925] 1 KB 14,27 and *Gardner v Ingram* (1889) 61 LT 729,730.)

So to speak as Lord Steyn did of "immaterial errors" was to beg the very question raised by the appeal.

Mannai leaves the law in disarray. If anyone doubts that, ; let them consider what the position now is where, in relation to such a break clause, the tenant names a date which is two days out rather than one, or three days out, or a week. Or suppose that, though he gets the date right, the tenant's notice falls short of six months by one day, or two days, or a week. And so on. The possibilities for doubt are numerous.

The decision in *Mannai* encourages sloppiness and carelessness in legal offices, of which there might be thought to be quite enough already. It introduces an uncertainty into the law of landlord and tenant which is both undesirable and unnecessary, rendering the giving of reliable advice difficult in yet one more area.

Francis Bennion Oxford